"The State Water Board has never had the luxury of advocating protection of just one water need, such as the environment or agriculture or that of large cities."

—Don Maughan, Water Board Chair 1986-1992

Balancing Demands, Protecting Uses

Water is California's lifeblood, vital to every aspect of our lives. Water has played a major, and often contentious, part in the shaping of our state since California entered the union in the mid-1800s.

Through a ballot initiative in the early 20th Century, voters passed a Constitutional amendment declaring that users of our water resources "shall put water to the highest beneficial use possible and shall not waste water or use it unreasonably."

More than 30 years ago, the California Legislature recognized that we would not have enough clean water for agricultural, municipal, industrial, environmental and other uses unless water quality and water quantity decision-making were coordinated. So it was that the State Water Resources Control Board was created and given the broad authority and immense responsibility to not only protect water quality, but to balance competing demands on our water resources and attempt to resolve decades-long water disputes.

This new regulatory board merged the functions of two previous Boards: the State Water Quality Control Board and the State Water Rights Board. The former had its roots in the late 1940s, when legislators created a more streamlined regulatory body to address the rising water quality problems associated with the state's explosive industrial and population growth. A water rights commission, which preceded the water rights board, was created in the early 1900s to arbitrate and resolve the state's water battles, which began during the 1849 Gold Rush. Back then, prospectors from throughout the world raced to the Sierras to stake their claims, using the cold mountain streams as an invaluable pathway and tool to unearth this precious metal.

Today the five-member State Water Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Quality Control Boards located in the major watersheds of the state. The Regional Boards, each comprised of nine members, serve as the frontline for state and federal water pollution control efforts. A Basin Plan tailored to its unique watershed and providing scientific and regulatory basis for each Regional Board's water protection efforts guides each Board

To better understand complexity of the State Water Board's charter, it is important to grasp the evolution of water rights and water protection as it evolved from gold mining days, through the 20th century and the birth of the environmental movement in the late 1960s, to the new millennium with its increasingly complex, interrelated water issues.

The Early Years

Surface Water

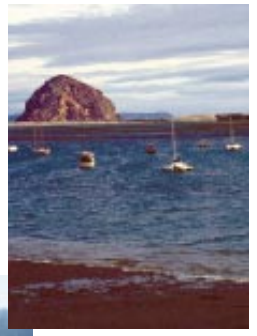
Water rights law in California is markedly different from the laws governing water use in the eastern United States. Seasonal, geographic, and quantitative differences in precipitation caused California's system to

develop into a unique blend of two very different kinds of rights: riparian and appropriative. Other types of rights exist in California as well, among them reserved rights (water set aside by the federal government when it reserves land for the public domain) and pueblo rights (a municipal right based on Spanish and Mexican law).

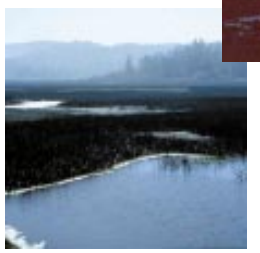
Riparian rights entitle the landowner to use a share of the water flowing past his or her property. While riparian rights require no permits or licenses, they apply only to the water that would naturally flow in the stream and they do not allow the user to divert water for storage or use it on land outside its watershed. Riparian rights remain with the property when it changes hands.

Water right law was set on a different course with the Gold Rush. Water development proceeded on a scale never before witnessed in the United States as the '49ers built extensive networks of flumes and waterways to work their claims. The water carried in these systems often had to be transported far from the original river or stream. The self-governing, maverick miners applied the same

Through its water rights process, the State Water Board protected tributaries that fed into the majestic Mono Lake, shown above.



Morro Bay



The Russian River

"finders-keepers" rule to water that they did to their mining claims—it belonged to the first miner claiming ownership.

To stake their water claims, the miners developed a system of "posting notice" which signaled the birth of today's *appropriative* right system. It allowed others to divert available water from the same river or stream, but their rights existed within a hierarchy of priorities. This "first in time, first in right" principle became an important feature of modern water right law.

When California entered the Union in 1850, one of the first actions taken by its lawmakers was to adopt the common law of riparian rights. One year later, the Legislature also recognized the appropriative right system as having the force of law. The appropriative system continued to increase in use as agriculture and population centers blossomed and ownership of land was transferred into private hands. This is the basis of a series of disputes which have continued through today.

The conflicting nature of California's dual water right system has prompted numerous legal disputes. Unlike appropriative users, riparian right holders were not required to put water to reasonable and beneficial use. This clash of rights eventually resulted in a constitutional amendment requiring all water

Northern California coast

use to be "reasonable and beneficial." These "beneficial uses" include municipal and industrial uses, irrigation, hydroelectric generation, livestock watering, recreational uses, fish and wildlife protection, and aesthetic enjoyment.

Up to the early 1900s appropriators—most of them miners and nonriparian farmers—had simply taken control of and used what water they wanted. Sometimes notice was filed with the county recorder, but no formal permission was required from any administrative or judicial body.

The Water Commission Act of 1913 established today's permit process and created the agency that later evolved into the State Water Board. That agency was given the authority to administer permits and licenses for California's surface water.

Riparian rights still have a higher priority than appropriative rights. The priorities of riparian right holders generally carry equal weight and during a drought all share in the shortage.

In times of drought and limited supply the most recent ("junior") right holder must be the first to discontinue use; each right's priority dates to the time the permit application was filed with the State Water Board. Although pre- and post-1914 appropriative rights are similar, post-1914 rights are subject to a much greater degree of scrutiny and regulation by the Board.

The State Water Rights Board, created in 1956 as part of the same legislation that created the Department of Water Resources, recognized that the Department would both hold water rights and operate water project facilities. The Legislature created an independent board to administer the water right functions of state government thus avoiding a potential conflict of interest by the Department.

Groundwater

California has no permit process for regulating groundwater use. Prior to 1903, the English system of unregulated groundwater pumping had dominated, but proved to be inappropriate to California's semi-arid climate. In most areas

of the state, landowners whose property overlies groundwater may pump it for beneficial use without approval from the State Water Board or a court. In several Southern California basins, however, groundwater use is regulated in accordance with court decrees. In the 1903 case *Katz v. Walkinshaw*, the California Supreme Court decided that the "reasonable use" provision governing other types of water rights also applies to groundwater.

The Early Years Of Water Pollution Control

In the mid-1940s, outbreaks of water-borne diseases, degradation of fishing and recreational waters, coupled with rapid war-time industrial development and population growth prompted a new appraisal of water pollution control in California.

- While there were numerous governmental agencies with varying degrees of jurisdiction over waste disposal, public health, or water, attempts to address and solve new pollution concerns in a planned, orderly, and reasonable manner were largely unsuccessful.
- Cities were faced with a need to build large capital improvement programs for pollution control. Industries, confronting unanticipated demands, found many differing interpretations of numerous laws and overlapping authority among the various local, state, and federal regulatory agencies.
- New industrial developments were hampered because regulators were unable to provide definite assurances about what conditions must be met or what pollution control works would be required.
- All affected interests—urban, industrial, agricultural and recreational water users—sought both more effective and more equitable water pollution control.

In 1949, the California Assembly Committee on Water Pollution realized that existing laws and procedures were cumbersome and often unreasonable. Numerous jurisdictions tried to implement the laws amidst much hostility from the hundreds of agricultural, industrial, and recreational interests involved. The committee concluded that the state had reached the point where continued population and industrial growth would soon exhaust water supplies. California's limited water resources could only be protected and conserved if regulators found a way to maximize water quality objectives and economic use and reuse.

Sweeping changes in California's approach to water pollution control and water quality were recommended. Specifically, the committee stated:

> *"Water pollution is largely a local or regional problem…but it also involves conflicting interests of the State and the Nation. Channeling all interests through a single focal point at the local level will provide the missing link necessary to abate, control, and prevent water pollution effectively and equitably."*

Heeding the committee's recommendations, the California Legislature enacted the Dickey Water Pollution Act that took effect October 1, 1949.

Dickey Water Pollution Act: Creation of State Water Pollution Control Board

The Dickey Act created a "State Water Pollution Control Board" consisting of nine gubernatorial appointees representing specific interests and four ex officio state officials. Its duties included (1) setting statewide policy for pollution control and (2) coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution.

The Legislature realized that California's water pollution problems were primarily regional and depended on precipitation, topography, and population, as well as recreational, agricultural, and industrial development, all of which vary greatly from region to region. The committee's report noted that the snow-capped mountains of the Sierra Nevada differ from the Mojave Desert as significantly as Vermont differs from Arizona; and the industrialized Los Angeles basin and San Francisco Bay area are as different from the San Joaquin Valley or the North Coast as New York Harbor is from central Texas or Washington state.

The Dickey Act established nine regional water pollution control boards located in each of the major California watersheds. The Boards have primary responsibility for overseeing and enforcing the state's pollution abatement program. Five gubernatorial appointees, representing water supply, irrigated agriculture, industry, and municipal and county government in that region, served on each Regional Water Board. (That number has since grown to nine members.)

Continuing Evolution Of Water Policy

While water pollution control remained the principal purview of the state board and nine regional boards, new appreciation for the impact of water quality on the lives of Californians evolved in the 1950s and 1960s.

Several measures were proposed to strengthen the then existing Water Pollution Control Board. It was renamed the "State Water Quality Control Board" and was charged with the broader field of water quality (rather than the limited field of sewage and industrial waste control).

The continuing question of how best to administer water quality programs occasioned further work by the Assembly Water Committee. Paul R. Bonderson was then chair of the Water Quality Control Board and recalled,

> *"I thought [what] should be done was to combine the Water Rights Board and the Water Quality Board, so we would have an overall water regulatory agency that would concern itself with both quality and quantity. There is a direct inter-relationship."*

There was a proposal at the time for the functions to be absorbed by the Department of Water Resources. Bonderson saw DWR as a "study/planning unit and water purveyor" and believed his idea would acieve "an appropriate separation of powers, and you would eliminate the conflict."

Recognizing that so many water issues in California involve both quantity and quality, the Assembly's 1966 and 1967 reports proposed a coordinated water regulatory program. These reports included statutory changes that were subsequently enacted and

in 1967 the "State Water Quality Control Board" and "State Water Rights Board" were merged and the "State Water Resources Control Board" came into being.

Porter-Cologne: California's cornerstone of water protection law

The State Assembly then asked a panel of industrial, agricultural, and state and local government members to report on needed revisions to existing water quality laws. In 1969, the State Legislature enacted the Porter-Cologne Water Quality Control Act, the cornerstone of today's water protection efforts in California.

Porter-Cologne, named for the late Los Angeles Assemblyman Carly V. Porter and then-Senator Gordon Cologne, was soon recognized as one of the nation's strongest pieces of anti-pollution legislation. Through it, the State Water Board and the nine Regional Boards have been entrusted with broad duties and powers to preserve and enhance all beneficial uses of the state's immensely complex waterscape. The new state law was so influential that Congressional authors used sections of Porter-Cologne as the basis of the Federal Water Pollution Control Act Amendments of 1972 (commonly known as the Clean Water Act). In 1970 Ronald B. Robie, then a member of the SWRCB wrote,

> *"The law provides a modern framework within which growth of the state's economy can be managed in a manner which enhances rather than desecrates the environment and water resources."*

The Clean Water Act required the states or the U.S. Environmental Protection Agency to set standards for surface water quality, mandate sewage treatment and regulate wastewater discharges into the nation's surface waters. It established a multi-billion dollar Clean Water Grant Program that, together with Clean Water Bond funding, approved by California's voters, assisted communities in building municipal wastewater treatment facilities.

During and following heavy rains, polluted materials discharged into a storm drain are carried directly to surface and ocean water. The Clean Water Act requires cities, industries and construction projects to obtain permits to discharge storm water.

The Clean Water Act, along with voter-approved bond programs, helped provide several billion dollars to construct or improve municipal wastewater treatment facilities, such as the one here.

The Southern California Coast

Rather than operate separate state and federal water pollution control programs in California, the State assumed responsibility for implementing the Clean Water Act. This involved melding state and federal processes together for activities such as setting water quality standards, issuing discharge permits and operating the grants program.

A Mandate To Balance All Water Uses

Since its creation in 1967, the State Water Board has always followed its original mandate to balance, to the extent possible, all uses of California's water resources be they domestic, agricultural, or environmental. The onerous task—balancing competing water needs in a state where water supply can be located hundreds of miles from its heaviest demand—is often difficult.

Today's challenge is exacerbated by California's rapid population growth, and the continuing struggle over precious water flows. The State Water Board also faces tough new demands:

- to fix ailing sewer systems;
- to build new wastewater treatment plants;
- to tackle the cleanup of underground water sources impacted by the very technology and industry that has catapulted our state into global prominence.

Additionally, the State Water Board will continue to throw its regulatory energy at a most vexing problem—nonpoint source pollution, or polluted runoff—which, unlike industrial pollution of the latter half of the Twentieth Century, cannot be easily categorized, isolated or resolved.

The late State Water Board Chairman, Don Maughan, best expressed the work of the State Water Resources Control Board when he stated:

> *"The State Water Board has never had the luxury of advocating protection of just one water need, such as the environment or agriculture or that of large cities. Our charge is to balance all water needs of the state. Some call it a superhuman task, but through the years this Board, aided by its excellent staff, has done what I call a superhuman job of accomplishing that mandate despite the intensive historical, political, and economic pressures that always accompany California water issues."*